

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8753 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE C.K.BUCH

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
  5. Whether it is to be circulated to the concerned Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals? : NO

-----  
NEW INDIA ASSURANCE COMPANY LIMITED

Versus

MINOR HARSHIL DILIPKUMAR THAKAR  
-----

Appearance:

1. Special Civil Application No. 8753 of 2004  
MR PV NANA VATI for Petitioner No. 1  
MR VIBHUTI NANA VATI for Petitioner No. 1  
RULE SERVED for Respondent No. 1-2  
-----

CORAM : HON'BLE MR.JUSTICE C.K.BUCH

Date of decision: 09/02/2005

ORAL JUDGEMENT

The petitioner-insurance company, invoking jurisdiction of this Court under Article 227 of the

Constitution of India, in reference to the order granting permission of MAC Petition on 25th March, 2004 by the learned Presiding Judge of the MAC Tribunal (Main), Ahmedabad (Rural) has filed the present petition. The grounds of challenge are stated in paragraph no.7 of the petition, which are reproduced hereunder for the sake of brevity and convenience:-

- "A) The learned Tribunal failed to perceive and recognise that the main contention of the Insurance Company was that the Driver had no valid licence on the date on which the accident occurred i.e. 16-04-2002.
- (B) Under the circumstances, when the owner knew of the Driver having no valid licence, it was very much likely that the insurance Company will be exonerated and petitioner would not be able to realise any amount from him.
- (C) Having realised that on his entire application, though he will get award, he will not be able to execute the award against the insurance Company. So, the claimant skillfully obtained order under Section 140 and thereafter, made an application, Exh.15, to withdraw the main application under Section 166 of the Motor Vehicles Act. The learned Tribunal failed to realise that Section 140 is dependent upon Section 166. Section 140 is for interim application. If Section 166 is withdrawn, interim application cannot be sustained at any point of time. In law, there cannot be any interim application when the main application is withdrawn."

The certified copy of the order under challenge clearly reveals that the Court has not granted the formal permission to withdraw the petition but has recorded the purshis of withdrawal filed by minor claimant, Harshil Dilipkumar Thakar. It appears that in absence of the advocate of the petitioner-insurance company the permission of withdrawal has been accorded impliedly recording the withdrawal purshis exh.15 and by treating the petition disposed of on withdrawal. Normally, the withdrawal should be granted in presence of the other

side especially when there is an element of conflict of interests between the petitioner and the opponents as well as the opponents inter-se. The order of treating the petition disposed of on account of the withdrawal purshis is found bad. The title of the withdrawal purshis is misleading and it is entitled as "compromise purshis". In reality, the purshis is not a compromise purshis but it is a withdrawal purshis and there is no element of compromise. On the contrary, the order passed below exh.3 dated 26th February 2004 indicates that the application under Section 140 of the Motor Vehicles Act was contested by the insurance company and it was allowed on merits. In such a fact situation and in light of the nature of the defence of the insurance company, the learned Presiding Judge ought not to have permitted the withdrawal lightly and that too in absence of the advocate of the insurance company. The petition therefore should be allowed. It is relevant to note that though the other side is served has not cared to appear in the matter. Therefore, the order permitting the withdrawal by accepting the purshis exh.15 is quashed and set aside. The Tribunal concerned is directed to proceed with the matter on merits and if such a purshis is tendered then, after hearing the advocate for the insurance company, the appropriate order may be passed. Rule is made absolute.

(C.K. Buch, J.)

\*mohd